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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Ex Parte

August 3, 2000

Hon. Susan Ness
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Applications of America Online, Inc. and Time Warner Inc.
For Transfers of Control
CS Docket No. 00-30

Dear Commissioner Ness:

It was a pleasure to speak to you concerning the announcement on Monday that Time Warner Cable has entered into a binding agreement with Juno Online Services, Inc. for the provision of high-speed Internet service over Time Warner Cable's broadband network. We believe this announcement is yet another significant step showing that AOL and Time Warner are in fact implementing the framework outlined in their February 12, 2000 "Memorandum of Understanding." Other examples demonstrating the parties' commitment to implementation of the undertakings set forth in the MOU include:

- Time Warner has commenced discussions with its partners regarding the restructuring of the Road Runner partnership consistent with the Justice Dept. order that AT&T divest its interest. Such a restructuring is likely to lead to an early termination of restrictions limiting the ability of Time Warner Cable to offer multiple ISPs.
- Time Warner Cable has began a technical and operational trial of multiple ISP offerings in Columbus, Ohio. In addition to AOL and Road Runner, other ISPs, including Juno, have been invited to participate in this trial.
- Time Warner is continuing its discussions with AOL and numerous other ISPs. We hope to have additional deals to announce as soon as possible.

Through their leadership, AOL and Time Warner are fostering a marketplace solution to the open access debate, helping to establish a vibrant competitive environment where consumers

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will enjoy many choices.

I read the e-mail you forwarded to me claiming that Juno is "affiliated" with AOL and thus a deal between Time Warner and Juno is not significant. Quite frankly, I continue to be astounded by the amount of misinformation being disseminated by critics of the AOL/Time Warner transaction. As correctly reported by the Washington Post, Juno is an "independent Internet service provider." In fact, Juno is the third largest ISP in the U.S. Neither Time Warner nor AOL hold any ownership interest in Juno whatsoever.

The fact that AOL has agreed to license its instant messaging software to Juno certainly does not mean that Juno is an "affiliate" of AOL. Rather, this agreement by AOL to license an important and well-received feature of its service to one of its major competitors is yet another example of AOL's great progress in making instant messaging widely available - - even to users of competing ISP services. As explained by AOL at last Thursday's en banc hearing, AOL has also submitted a proposal to the IETF for true server-to-server interoperability for all instant messaging products.

We look forward to continuing to work with you as the Commission completes its merger review process.

Very truly yours,



Joseph Collins

cc: Magalie R. Salas, Secretary, FCC

00.WPD

Juno Deal a First for Time Warner

By ARIANA EUNJUNG CHA
Washington Post Staff Writer

Time Warner Inc. yesterday announced an agreement giving an independent Internet service provider access to its cable television subscribers, just days after federal regulators pressed the company to explain how its merger with America Online Inc. would be no barrier to such deals.

The pact with Juno Online Services Inc. is Time Warner's first with an Internet service provider that is not affiliated with the media giant. It would allow Juno to offer

its services to cable subscribers nationwide after a trial run in Columbus, Ohio.

Time Warner officials, who described the deal as a "binding letter of intent," declined to offer financial details of the agreement. But sources say the companies would split the Internet access subscription fees in a manner similar to Time Warner's contract with Road Runner LLC, another provider in which it owns a stake.

The heads of Time Warner and AOL a few months ago signed a non-binding memorandum of understanding pledging to open their

cable lines to competitors. But rival companies have been pushing loudly for government officials to make that promise a condition of approving the \$183 billion merger. They have been worried that AOL Time Warner would lock competitors out of its cable network and dominate emerging high-speed "broadband" Internet services such as interactive television.

New York-based Juno offers several tiers of Internet access services, including one that is free. It had 3 million customers in March, mak-

See TIME WARNER, E2, Col. 1

Time Warner to Open Cable Lines to Juno

TIME WARNER, From E1

ing it the third-largest Internet service provider, after AOL and EarthLink Inc. The company will participate in a test that Time Warner is conducting in Columbus to examine the technological and administrative needs of a cable system offering service from competing Internet service providers.

Other providers being offered include Road Runner and the AOL flagship service, as well as its dis-

count subsidiary CompuServe. Time Warner is in "discussions" to add a number of other providers, said spokesman Ed Adler.

At a Federal Communications Commission hearing Thursday, a skeptical group of government officials pressed Time Warner chief executive Gerald M. Levin to give them a time frame for when he thought the company would be able to offer the services of an unaffiliated Internet service provider. He declined to say when but insist-

ed the company was receptive to the idea.

Yesterday's announcement leaves it unclear when Juno will be able to begin offering its services. Time Warner's Adler said the company is still negotiating to modify Road Runner's exclusive contract, which expires at the end of 2001. He said, however, that Time Warner hoped it would be able to roll out another service on its cable lines in a "substantially shorter" time period than that.

The Washington Post

AN INDEPENDENT NEWSPAPER

Opening Cable

LAST WINTER, when AOL and Time Warner announced plans to merge, the two companies laid out the case against regulatory opposition to their union. True, the marriage would concentrate power in the brave new multimedia world: Time Warner cables would offer high-speed access to AOL's Internet service, which would in turn offer Time Warner TV, magazines and music. But the companies explained that this concentration would be redeemed by the principle of "open access." Time Warner cable would give consumers a choice of Internet services, not just AOL. And AOL would point customers to content from all manner of sources, not just from Time Warner.

The firms now are trying to show that open access is more than a slogan. Time Warner has announced a deal with Juno, a company that provides dial-up access to the Internet in fierce competition with AOL. People living in areas

served by Time Warner's cable network will be able to choose Juno as their high-speed Internet provider rather than being obliged to use a Time Warner affiliate. The competition should help keep Internet subscription rates down while increasing AOL's incentive to offer the widest possible variety of content, lest it lose customers. Open access in the Internet service market thus promotes open access to the Net for rival media companies.

The question for regulators is whether the firms' voluntary actions need to be bolstered by government intervention. Critics argue that AOL-Time Warner is not to be trusted: The firm may abandon openness once the merger is done; it is already a jealous guardian of its dominance in instant messaging. But the danger must be weighed against the cost and difficulty of regulating a fast-evolving industry. So long as the firms prove serious about open access, regulatory restraint is wisest.